me to say that the accused cannot be believed when he alleged that Pabian had admitted ownership of the cannabis in the police station but that evidence is of no consequence because a case is not decided on whether the Court believes or disbelieves the accused. What evidence I have gone through and for the reasons already given, the accused had cast a reasonable doubt in the case of the prosecution. I therefore discharge and acquit the accused.

The cannabis shall be destroyed by burning in the compound of the Court and the destruction shall be witnessed by the Senior Assistant Registrar of the High Court in Borneo at Tawau but the destruction shall not be carried out until after the disposal of the appeal against the judgment herein or until after the expiry of the time limited for appeal, whichever is later. The cannabis shall in the meantime be kept by the police.

PUNCA KLASIK SDN. BHD.

v.

ABDUL AZIZ BIN ABDUL HAMID & 19 ORS.

HIGH COURT, JOHOR BAHRU
DATO' JAMES FOONG J.
[ORIGINATING MOTION NO. 25-24 OF 1993]
24 OCTOBER 1993

LAND LAW: Entry of caveats on parts of a piece of land - Whether contrary to the National Land Code - Purchaser of the whole piece of land having prior knowledge of the caveators' interests in the land and purchase was subject to the interests in the land - Whether purchaser may be estopped from applying to have the caveats removed - Whether purchaser may be said to be an aggrieved party.

The plaintiff applied by way of motion to remove 20 caveats entered by the 20 defendants abovenamed on a plot of land (Lot 4271) which the plaintiff had purchased from the Trustees of an estate. The defendants had earlier on purchased parts of the plot from the said Trustees and were beneficial owners of their respective portions. The purchase of the whole plot by the plaintiff was subject to all encumbrances in the land, including caveats, interests, occupiers and tenants.

In opposing this application for removal of the caveats, the defendants submitted that:

(i) The plaintiff is not an "aggrieved party" falling within s. 327 of the NLC. The sale of the land to the plaintiff was made with the plaintiff's awareness of the existence of the defendants' interest and their caveats.

(ii) The prior knowledge possessed by the plaintiff of the defendants' interests estops the plaintiff from now seeking to remove the caveats.

(iii) Since the said portions of land had been disposed off earlier by the Trustees to the defendants, the plaintiff had no right to the defendants' interests in the land.

(iv) Section 322(1) NLC should be given a wide interpretation in the interest of justice.

(v) Under s. 327(1) NLC, the Court has the power to order that the caveats remain on grounds it may think just.

Held:

[1] The new proviso to s. 322(1) of the NLC (National Land Code (Amendment) Act 1984) specifically provides that no caveats shall be capable of being entered in respect of a part of the land. The proviso is unambiguous and incapable of any other interpretation than what is stated therein. The Court is bound to follow the judgment in the case of *Tan Heng Poh v. Tan Boon Thong & Ors.* [1992] 2 MLJ 1. It is an undeniable fact that all the defendants are owning only a portion of the land and by law their caveats on the land cannot be maintained.

[2] The definition of an "aggrieved party" stated in the case of *Ex parte Sidebotham* [1880] 14 Ch D 458 is accepted. The plaintiff is aggrieved because in law something wrongful has been done to them that affects their title to the property. Their knowledge of the caveats entered earlier does not prevent them from being an aggrieved party in law.

[3] On the issue of estoppel, it is not possible to estop an aggrieved party from removing these caveats even though they have knowledge of their existence before when, the subject-matter (the caveats) itself is in law invalid. The provision in the NLC is clear and equity must follow the law.

[4] Whether the defendants rights or interests in the said property are recognised by the plaintiff is a matter which the Court at this stage is not asked to determine. The issue before the Court is not of competing priorities. The plaintiff purchased the whole of the property contained in one document of title and were registered as proprietors of Lot 4271. The defendants may have an interest in a portion of the said property but in law such interest cannot be protected by a caveat, under s. 322(1) of the NLC. As such the caveats should be removed based on the sole principle that these caveats alleged to be protecting a mere portion of the land cannot be registered under statutory law.

[Motion allowed. Order for removal of caveats granted].

Cases referred to:

Dato Ong Kian Seng v. Lim Kut Sheong [1992] 1 CLJ 409 ***(cit)***

Tan Heng Poh v. Tan Boon Thong & Ors. [1992] 3 CLJ 1340 / [1992] 2 MLJ 1 ***(foll)***

Mosbert Bhd v. Stella D'Cruz [1985] 2 MLJ 446 ***(cit)***

Chng Sin Poey & Sons Sdn Bhd v. Quek Lian Meng [1979] 1 MLJ 98 ***(cit)***

N. Vengedaselam v. Mahadevan & Anor. [1976] 2 MLJ 161 ***(refd)***

Ex parte Sidebotham [1880] 14 Ch.D. 458 ***(foll)***

Legislation referred to:

National Land Code 1965, ss. 322(1), 327(1) & 371(1)

For the plaintiff - Wong Kim Fatt (K.H. Koh & Saw Hee Kin with him); M/s. K H Koh Azhar & Koh

For the 1st, 4th, 5th, 8th & 13th defendants - Thara Singh (Kushvinder Singh with him); M/s. Thara Singh Sidhu

For the 2nd, 9th & 18th defendants - M. Nathan; M/s. L. Pereira & Associates

For the 3rd defendant - Reginald Vallipuram; M/s. Reginald Vallipuram & Co.

For the 6th defendant - Awtar Singh; M/s. Awtar Singh & Co.

For the 7th defendant - S.L. Song; M/s. S.K. Song

For the 10th defendant - A. Kadir; M/s. Syed Ibrahim & Co.

For the 12th defendant - Chandra Sekran; M/s. Abdullah & Zainudin

For the 16th defendant - Harcharan Kaur; M/s. Lim, Han & Teoh

For the 19th defendant - Ibrahim Hashim; M/s. Hassan Ibrahim & Co.

For the 20th defendant - N.K. Sandhu & R. Gita; M/s. N.K. Sandhu & Co.

JUDGMENT

James Foong J:

The facts of this case are not disputed. They are as follows. On 9 July 1991, the plaintiffs entered into a Sale and Purchase Agreement with the Trustees of the Estate of one Syed Hassan bin Ahmad Alattas (hereinafter I shall refer to as the Alattas Estate), to purchase a piece of property held under Grant No. 26977 for Lot 4271 in the Township of Johor Bahru (hereinafter I shall refer to as the said property) which measures approximately about 24 acres.

When this sale came before this Court for approval, this Court ordered that it should be sold by tender to the highest bidder on the terms as laid down in a Court order dated 29 February 1992. One of the conditions for this sale was that the said property be sold without vacant possession and subject to all emcumbrances which include caveats, interest, tenants and occupiers thereon.

The plaintiffs were the successful bidders and the property was sold to them for a sum of approximately RM24 million.

On the said property are 20 caveats entered by the 20 defendants in this motion. Their claims are virtually similar; that they are the beneficial

owners of various parts of land in the said property which can be identified measuring from approximately 650 sq. ft. to 20,000 sq. ft. This they claimed were purchased from the trustees or beneficiaries of the said Alattas Estate long before the plaintiffs were successful in purchasing the said property.

The plaintiffs' application by way of this motion is to remove these 20 caveats of the defendants. Their argument is mainly based on the proviso of s. 322(1) of the National Land Code which is amended to read as follows:

> Provided that such caveats shall not be capable of being entered in respect of a part of the land.

As the defendants are only holding an interest in parts of the land, by this statutory provision they have no legal right to enter caveats on the said property. In support of their contention, the cases of *Dato Ong Kian Seng v. Lim Kut Sheong* [1992] 1 CLJ 409, *Tan Heng Poh v. Tan Boon Thong & Ors.* [1992] 2 MLJ 1 and *Mosbert Bhd v. Stella D'Cruz* [1985] 2 MLJ 446 were cited in support.

Counsel for the represented defendants after respective submissions seem to adopt the following grounds to oppose this application of the plaintiffs.

Firstly, the defendants contended that the plaintiffs are not an "aggrieved party" falling within the provision of s. 327(1) of the National Land Code (NLC). When the plaintiffs purchased the said property, they were aware of the existence of the defendants interest and their caveats. The plaintiffs even agreed to purchase the said property subject to existing caveats. This is evidenced from the sale and purchase agreement between the plaintiffs and the trustees of the said Alattas Estate and the Court order dated 29 February 1992.

Secondly by virtue of the plaintiffs knowledge of the defendants interest and caveats, the plaintiffs are estopped from removing them.

Thirdly, by equitable principles these caveats should remain as the plaintiffs have no right to the defendant's interest in their respective portions of land since these portions had earlier being disposed off by the trustees of the Alattas Estate or those claiming under them.

Fourthly, s. 322(1) NLC should be given a wide interpretation in the interest of justice and that the Supreme Court case of *Tan Heng Poh v. Tan Boon Thong* should be distinguished.

Finally the defendants submitted that this Court still has the power under s. 327(1) of the NLC to order the caveats to remain on grounds that it may think just following the decision of Syed Othman J. in *Chng Sin Poey & Sons Sdn Bhd v. Quek Lian Meng* [1979] 1 MLJ 98.

The National Land Code (Amendment) Act 1984 which came into effect on the 25 March 1985 has altered the law relating to caveats after the case of *N. Vengedaselam v. Mahadevan & Anor.* [1976] 2 MLJ 161. The new proviso to s. 322(1) of the NLC specifically provides that no caveats shall be capable of being entered in respect of a part of the land. In the Supreme Court decision of *Tan Heng Poh v. Tan Boon Thong* it is clearly explained that "a person who is interested only in a specific portion of land cannot enter a caveat against the land". This is the position of the law as it is today.

From the submissions of the defendants it is their intention to overcome the above provision of the law.

At the outset, this Court can categorically state that it cannot give any other interpretation to the proviso of s. 322(1) of the NLC other than what is stated therein. As stated in the judgment of Mr. Justice Mohamed Azmi SCJ in *Tan Heng Poh's* case, "Any other interpretation would appear to make it meaningless and inconsistent with the Torrens System of giving certainty and indefeasibility to registration of land title, save for fraud or misreprestation in the transfer or registration itself". In any event there is no ambiguity in the wordings of the proviso of s. 322(1) of the NLC to call for any other interpretation. As confirmed by the judgment in *Tan Heng Poh's* case, of which this Court is bound by law to follow, "For the purpose of entry and registration, a private caveat should bind the whole alienated land or the whole registrable interest in the said land. If a person claims only a limited title or interest in the alienated land, then his caveatable claim would be caught by the new proviso to s. 322(1)."

In this case, it is an undeniable fact that the defendants are all owning only a portion of the land and by law their caveats on the land cannot be maintained.

Now I shall move on to the contention by the defendants that the plaintiffs are not an "aggrieved party" under section 371(1) NLC. "Aggrieved party" is not defined in the NLC. However, in the case of *Ex parte Sidebotham*

[1880] 14 Ch.D. 458, it was accepted that "A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom decision has been pronounced, which has wrongfully deprived him of something or wrongfully affected his title to something." The plaintiffs could be aware of the defendants interest on the said property and even the existence of the caveats but, one cannot deprive the plaintiffs of their legal capacity of being an aggrieved party. The plaintiffs are aggrieved because in law something wrongful has been done to them that affects their title to the property. Though they may have knowledge of the caveats earlier, it does not prevent them from being an aggrieved party in law.

Following from the above, this Court shall now deal with the issue of estoppel raised by the defendants. The defendants alleged that since the plaintiffs were aware of the defendants interest and caveats on the said property and had even covenanted to buy with these encumbrances, the plaintiffs should be estopped from removing the said caveats. This to my mind is a wrong conception. By statutory provisions, these caveats cannot be registered in the first place. They are against the provisions of the NLC. It is not possible to estop an aggrieved party from removing these caveats even though they have knowledge of their existence before when, the subject matter (the caveats) itself is in law invalid. The equitable principle of estoppel cannot apply in the light of clear provisions of the law; equity follows the law.

The next issue raised by the defendants is that the defendants have purchased their respective portions on the said land earlier than the plaintiffs. This being the case and coupled with the fact that the plaintiffs were aware of the defendants interest on the said land, the plaintiffs have no legal right to the defendants portion and as such their caveats have a right to remain. The issue before this Court is not that of competing priorities. The issue before this Court is whether in law the caveats of the defendants should be removed. Whether the defendants rights or interests in the said property are recognised by the plaintiffs is a separate matter altogether which, at this stage, this Court is not asked to determine. When the plaintiffs entered into an agreement to purchase the said property from the Alattas Estate and were successful bidders in the tender, they were purchasing a piece of property held under Grant No. 26977 for Lot 4271 in the Township of Johor Bahru. As they were purchasing this property contained in one document of title they are, as permitted under the NLC, to be registered as proprietors. The defendants may have an interest in a portion of the said property but in law such interest cannot be protected by a caveat under s. 322(1) of the NLC. Such being the case these caveats should be removed. In removing these caveats this Court is not determining that the plaintiffs have a lesser interest than the defendants in the certain portions of the said land. The removal of these caveats is based on the sole principle that these caveats alleged to be protecting a mere portion of land cannot be registered under statutory law.

This Court has been informed by the defendants that they are prepared to consent to the said property being transferred to the plaintiffs subject to these caveats. As this Court has stated earlier, the issue before this Court is for the removal of the caveats. Even if the said property is being transferred to the plaintiffs subject to these caveats, the issue still remains as to whether these caveats can be there in the first place. One cannot prevent the plaintiffs from making their application for removal at any time. As they have chosen to make such application now, this Court shall have to make necessary orders accordingly.

I regret to say, this Court does not have such powers to alter, vary or add on to any law as laid down by statute. Section 327(1) NLC read in conjunction with s. 322(1) NLC is clear. An aggrieved person may apply to this Court to remove these caveats and this Court shall make "such order on the application as it may think just". "As it may think just" should be interpreted to mean as it may think just as stated in the law. In this case, the law under s. 322(1) NLC does not permit the defendants caveats to be registered. As such this Court can make no other order except as it is laid down in the law. The function of this Court is not to rewrite statute and to give it another meaning when there is a clear and unequivocal provision in the enactment. However harsh the result may be, the Court of law has to follow what is enacted by Parliament. In this case, the provision in an enactment of Parliament under s. 322(1) NLC is clear and unambiguous and this Court has to make an order for the removal of the defendants caveats under s. 327 of the NLC.